

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 17, 2004

IN RE:

BELLSOUTH'S MOTION FOR THE  
ESTABLISHMENT OF A NEW PERFORMANCE  
ASSURANCE PLAN

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DOCKET NO.  
04-00150

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ORDER GRANTING PETITION TO INTERVENE

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This matter is before the Hearing Officer upon the *Petition to Intervene of CompSouth* ("Petition to Intervene") filed by the Competitive Carriers of the South, Inc. ("CompSouth")<sup>1</sup> on November 5, 2004.

**Background**

BellSouth Telecommunications, Inc. filed the *Motion by BellSouth Telecommunications, Inc for the Establishment of a New Performance Assurance Plan* ("BellSouth's Motion") on May 13, 2004. On May 20, 2004, CompSouth filed a response requesting, among other things, dismissal of *BellSouth's Motion*. At a regularly scheduled Authority Conference held on June 7, 2004, the panel assigned to this docket voted unanimously to hold this docket in abeyance pending the outcome of a proposed workshop in TRA Docket No. 97-00309. That workshop

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<sup>1</sup> As listed in the *Petition to Intervene*, the members of CompSouth include Access Integrated Networks, Inc , MCI, Birch Telecom, Business Telecom, Inc , Covad Communications Company, AT&T, NewSouth Communications Corp , Talk America, Nuvox Communications, Inc , ITC^DeltaCom, Xspedius Communications, Momentum Business Solutions, Network Telephone Corp , KMC Telecom, Z-Tel Communications, Inc , and IDS Telecom LLC

was held on September 14, 2004, and on September 23, 2004, BellSouth filed a motion requesting that a procedural schedule be set in this docket. At the October 11, 2004 Authority Conference, the panel voted to re-activate this docket, to deny CompSouth's request for dismissal of *BellSouth's Motion* and to appoint a Hearing Officer to prepare the matter for a Hearing before the panel. On November 1, 2004, the Hearing Officer held a status conference at which counsel for CompSouth indicated that CompSouth did not plan to participate further in this docket, although its individual members might decide to participate. On November 5, 2004, the Hearing Officer issued a Notice of Filing, directing any persons or entities that intended to participate in discovery to file a petition for intervention no later than November 12, 2004. On November 5, 2004, CompSouth filed its *Petition to Intervene*.

#### **Criteria for Permitting Intervention**

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene.

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
  - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
  - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
  - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.<sup>2</sup>

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<sup>2</sup> Tenn Code Ann § 4-5-310(a) (1998)

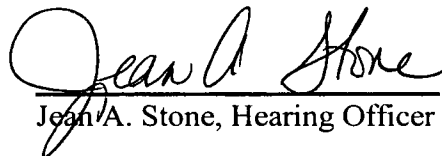
## **Discussion**

In its *Petition to Intervene*, CompSouth states that it is a coalition of competitive local exchange carriers certified by the Authority. CompSouth asserts that this proceeding “will address, among other things, the terms and conditions under which CompSouth members may operate in Tennessee” by addressing “performance measures and penalties regarding the wholesale provision of services and network elements to CompSouth members.”<sup>3</sup>

The Hearing Officer finds the *Petition to Intervene* filed by CompSouth was timely filed and served and substantiated that the legal rights, duties, privileges, immunities or other legal interests of the intervenor may be determined in this matter. The Hearing Officer further finds that the orderly and prompt conduct of this proceeding will not be impaired by granting the *Petition to Intervene*. In addition, no person or party has filed an objection to the *Petition to Intervene*. Upon applying the standards set forth in Tenn. Code Ann. § 4-5-310(a) and Tenn. Comp. R. & Regs. 1220-1-2-.08, the Hearing Officer grants CompSouth’s *Petition to Intervene*.

### **IT IS THEREFORE ORDERED THAT:**

The *Petition to Intervene of CompSouth* filed by the Competitive Carriers of the South, Inc. is hereby granted. CompSouth may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed herein.

  
Jean A. Stone, Hearing Officer

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<sup>3</sup> *Petition to Intervene*, p. 1 (November 5, 2004)